denial that the 1st plaintiff had been accepted by members of the deceased's family as the secondary wife or "t'sip".

The case for the plaintiffs is that the second marriage was a marriage which is recognised by the law of this country and, therefore, confers on the 1st plaintiff and her children the status of lawful widow and children of the deceased intestate and that, therefore, they are entitled to the beneficial shares of the estate of the deceased intestate. For the defence, the contention was that the second marriage was not a kind of marriage which is recognised by the law of this country because the first marriage was a monogamous marriage. To put it in another way, the defence contention is that the subsistence of a monogamous marriage prevented the deceased from contracting a subsequent valid marriage so that if he, in fact, did go through such subsequent marriage, then such subsequent marriage was void. So far as the present proceedings are concerned only with the matter relating to entitlement to shares in an estate and not to matters relating to the commission of a criminal offence, it seems to me that the view of the law of this country on the question raised by the defence is far from being settled. The authorities cited do not seem to apply to the circumstances of this case and whatever the views expressed in those cases which seem applicable can only be *obiter*. Turning to the matter in dispute, the defence contention appears to have given rise to two questions. One which I have already stated, is whether the subsistence of a monogamous marriage would operate to prevent the deceased intestate from entering into a subsequent valid marriage. It does not appear to me that at the time of the second marriage there was in force any statute which expressly, or by necessary implication, would have the effect of preventing the deceased intestate from contracting a subsequent valid marriage. Nor am I aware of any binding decisions of the courts of this country which can be said to have that effect. Therefore, on this first question, I am compelled to the view that the subsistence of a Christian monogamous marriage would not constitute a bar to the deceased intestate from subsequently contracting a marriage which would be valid by his personal law. The second question which arises from the defence contention is whether the deceased intestate, who was a Christrian during his life time could validly enter into a polygamous marriage. This question was discussed in the case of *Re Loh Toh Met, decd.*[1] but the decision thence seems to have been based on the finding by the Court of Appeal that the deceased was not a Christian at the time of any of the marriages. In this way, that case could not be of much assistance to the determination of this question before me.

But in the case of *Dorothy Yee Yeng Nam* v. *Lee Fah Kooi*,[2] at page 263, Thomson J. (as he then was) who, incidentally, presided in the appeal of *Re Loh Toh Met, decd., supra,* stated:—

> "In the Straits Settlements, however, whatever may be the position as regards other races, the only conclusion that can be drawn from the *Six Widows* Case *supra*, which is the classical case on the subject, is that as regards Chinese the question of personal law is based on race. The courts in effect have given judicial recognition to certain customs prevalent or thought to be prevalent among persons of Chinese race irrespective of their domicile or religion. (The underlining is mine. They have thus set up what might be called a sort of common law as affecting persons of Chinese race and it would seem that the case is the same in those portions of the present Federation which were not formerly part of the Straits Settlements or, perhaps more accurately, which were part of the former Federated Malay States."

Hill J.A. sitting at the appeal in *Re Loh Toh Met, decd., supra,* referring to this said:—

> "It is a natural corollary of this statement that a Christian Chinese may legally contract a polygamous marriage if to do so is consistent with his personal law based on race."

Indeed, it is, I think, fair to say that the law is far from being settled on this question. But this need not present much difficulty in this case for I accept the evidence that some time before he went through the second marriage with the 1st plaintiff the deceased intestate had embraced Buddhism. This removes any obstacle there might be in coming to the conclusion that the 1st plaintiff and her children are the lawful widow and children of the deceased intestate.

Accordingly there will be judgment for the plaintiffs in terms of the prayers set out in the statement of claim and costs.

Judgment for the plaintiffs.

Solicitors: *Yeap & Yeap; Dharmananda & Co.*

LOH TECK CHONG v. PUBLIC PROSECUTOR

[A.Cr.J. (Ong F.J.) August 17, 1965]

[K.L. — Criminal Appeal No. 26 of 1965]

Gaming — Betting — Rebuttable presumption — Expert evidence.

Betting Ordinance, 1953, ss. 6(3), 8(1) and 14A — Rebuttable presumption — Evidence of police officer who is not an expert — Duty of court.

The appellant was convicted for an offence under section 6(3)(a) of the Betting Ordinance, 1953. A racing programme was found in the possession of the appellant and a police inspector gave evidence under section 14A of the Betting Ordinance regarding this programme.

Held: (1) the legal presumption raised by section 14A of the Betting Ordinance, 1953, is a rebuttable presumption and does not in any manner shut out closer scrutiny and evaluation of the evidence;

(2) there was no reason why the explanation of the appellant as regards the marks on the racing programme

should be rejected and therefore the conviction must be set aside.

MAGISTRATE'S CRIMINAL APPEAL.

T. Selvarasan for the appellant.

Idris bin Yusof (Deputy Public Prosecutor) for the respondent.

Ong F. J.: The appellant was convicted in the magistrate's court at Kuala Lumpur on a charge of having acted as a bookmaker at the Selangor Turf Club, an offence under section 6(3)(a) of the Betting Ordinance 1953, and was sentenced to a fine of $500. He appeals against such conviction.

The facts are quite simple. March 31, 1963 was the first day of the April meeting and at 1 p.m. a police constable, Yong Choon Hock, went on duty there with others under an inspector. What followed is best described in his own words: "At 4.15 p.m. I kept on observing a male Chinese. There were 4 or 5 going to and fro. They talked something secret and went away. The person under observation moved from that place and did something on the book he was having. The accused is the person under observation." This police constable, thereupon, took instructions from his superior officer, and acting thereon, arrested the appellant and took possession of the book he mentioned, which, in fact, was none other than the official programme.

The prosecution called inspector Mitchell to give evidence, under section 14A of the Ordinance, regarding the racing programme. This is a startling departure from standard practice as to expert evidence. The section was introduced by the Betting (Amendment) Act, 1961 and reads:

"14A. In all proceedings under this Ordinance any evidence given by a police officer not below the rank of sergeant that any book, account, document, telegram, writing, circular, card or other article produced before the court had been used or intended to be used for betting or wagering shall, until the contrary is proved, be deemed to be sufficient evidence of the fact."

Baldly stated, it dispenses completely with the need for expert evidence, so that, in effect, any policeman, however unversed in the ways of the bookmaker, or in any form of betting whatsoever, becomes qualified to testify in the capacity of expert on a subject in which he may be an absolute *ignoramus*, and his opinion, a simple *ipse dixit*, then suffices to raise a presumption of guilt until the contrary is proved by the hapless suspect. To say that I am astounded by this piece of legislation is to put it mildly. Parliament, it was said, can do anything except make a man a woman or a woman a man. The Act of 1961 must, I think, be an egregious instance of omnipotence, when the bray of an ass can be metamorphosed into the voice of the expert — the only limitation being that the policeman should have attained a certain rank, however he did it, including, of course, climbing up by the ageing process.

I have made these observations because, however unfathomable the collective wisdom of the legislature should be to lesser men, the legal presumption raised by section 14A is a rebuttable one. It does not in any manner shut out closer scrutiny and evaluation of the evidence. On the contrary, being so lightly raised, it imposes on the courts a correspondingly heavier duty to be even more diligent to satisfy itself of the guilt of an accused before convicting.

I have therefore given the evidence in this case the careful consideration that it requires and I do not think that the conviction can stand.

In the first place, section 8(1) raises a presumption from the mere possession of documents which "appear to have been used or intended to be used or appear to relate to the business of a bookmaker." Section 14A then simplifies the method of proof — that the documents produced are of the character alleged. Here the evidence of inspector Mitchell cannot raise even the ghost of a presumption, because he frankly had admitted that it was impossible for him to say that the marks in the racing programme related to book-making. The appellant should have been acquitted at the close of the prosecution on the ground that he had no case to answer.

The learned magistrate, however, thought otherwise. The appellant duly made his answer, which I have checked against the racing programme exhibited. Examination shows that in race 1 the two horses scratched were deleted by a cross over their names. No bets were indicated. In race 2, the one scratched horse was similarly deleted. In addition there was one small "x" against the 12th horse, and a double "x" against the 3rd horse: the appellant explained that he had placed his own bets on these two horses fancied by him. In race 3 against the 13th horse there was a double "x", and against the 2nd and 9th were two short ticks each. These were explained thus: "The main bet was on horse No. 13 with combination of horses 9 and 2". For race 4 the card was unmarked. In race 5 at 3.50 p.m. there was a double "x" against the 3rd horse, one "x" against the 11th horse, one tick against the 1st horse and 3 against the 5th. The explanation was "main bet on 3, combination of 1 with 3, 5 with 3 and 11 with 3". Finally, just before his arrest, the appellant had made two ticks against each of three horses, for a combination in race 6.

I do not understand how this explanation could have been rejected. There were no bets on races 1 and 4. Such betting as there was in three other races was on a scale such as any punter might have indulged in for himself. The

marks on the card for race 6 merely indicated his fancy as he was arrested after race 5.

Accordingly I allow this appeal, set aside the conviction and order the fine to be refunded.

Appeal allowed.

PUBLIC PROSECUTOR v. ER AH KIAT

[O.Cr.J. (Raja Azlan Shah J.) August 17, 1965]

[J.B. — Emergency Criminal Trial No. 30 of 1965]

Internal Security Act, 1960 — Statement by an accused person — Weight to be attached to such statement — Discovery of hand grenade as result of information given by accused.

Evidence — Statement by accused — Confession — Whether voluntary — Admissibility of.

The accused was charged for having under his control a hand grenade without lawful authority, an offence under section 57(1)(b) of the Internal Security Act, 1960. It appeared that the accused after his arrest was detained and questioned to obtain intelligence data for operational purposes. The accused gave information which led to the discovery of a hand grenade. Subsequently the accused made a statement to the police. This statement was attacked by the defence as not having been made voluntarily.

Held: (1) the admissibility of evidence that an accused person gave information which led to the discovery of a relevant fact is not related in any special way to the making of the confession and the fact of such discovery qualifies for admission any such statement or information which might otherwise be suspected on the ground of objection to the reliability of evidence of that type;

(2) in this case the fact of the discovery of the hand grenade fortified the truth of the cautioned statement of the accused;

(3) as the hand grenade was discovered in consequence of the statement of the accused this was evidence of his control even though the hand grenade was concealed in a public place, because unless he had control he could not have concealed it there;

(4) in this case considering the defence as a whole, the court was satisfied that the defence had not created a reasonable doubt as to the truth of the prosecution case but on the other hand had strengthened their case and therefore the court must find the accused guilty and convict him.

Cases referred to:—

(1) *Thurtell and Hunt* (1824), Notable British Trials, pages 144 and 145.

(2) *Queen* v. *Murugan Ramasamy* [1964] 3 W.L.R. 632 at p. 636.

(3) *Emperor* v. *Chokhey* A.I.R. 1937 All. 497.

(4) *Khoon Chye Hin* v. *Public Prosecutor* [1961] M.L.J. 105.

EMERGENCY CRIMINAL TRIAL.

B. T. H. Lee (Deputy Public Prosecutor) for the prosecution.

T. T. Rajah for the accused.

Raja Azlan Shah J.: The charge against the accused reads as follows:

"That you at about 12.00 noon on the 15th day of October, 1964 in the Security Area as proclaimed by the Yang di-Pertuan Agong vide F.L.N. 245 dated 17th August, 1964, namely Parit Sikon, in the District of Pontian, in the State of Johore, without lawful excuse had under your control ammunition, to wit, 1 hand-grenade without lawful authority and that you thereby committed an offence punishable under section 57(1)(b) of the Internal Security Act, 1960".

The case for the prosecution is as follows:

Parit Sikon has been proclaimed a security area vide Federal Legal Notification 245 of 1964 with effect from 17th August, 1964.

On 5th October, 1964, the accused was arrested at a coffee-shop at Parit Sikon. On the following day he was taken to the Special Branch, Johore Bahru, where he was detained until 14th October, 1964, under the Internal Security Act, 1960.

It is common knowledge that Indonesians had landed and were in the Chuan Seng Estate area and that they had given hand-grenades to their helpers. Local suspects connected with the Indonesians had been arrested. The Special Branch, had every reason to believe that the accused was associated with these infiltrators.

During the period when the accused was under detention he was repeatedly questioned by A.S.P. Foo Eng Chuan (P.W.3) whose main purpose was to obtain intelligence data for operational purposes. P.W.3 denied that he ever threatened, assaulted or tortured the accused. The first information coming from the accused with regard to a hand-grenade was about two to three days prior to 14th October. On the evening of the 14th, the accused told P.W.3: "He said that he had buried the hand-grenade behind his house". This piece of evidence was not contradicted. As a result of this information accused was taken to Pontian police station on the following day. He was handed over to inspector Thomas Laang (P.W.6) who became the investigation officer in the case. From there, P.W.3, P.W.4, P.W.6, P.W.8, together with the accused and two police constables went to Parit Sikon. There accused led the party into a barber shop and to the rear portion of the shop. Accused opened the rear door and led the party to a coconut tree stump about 15 to 20 feet from the shop.

What happened there was not very clear. P.W.6 testified that accused pointed out to him a spot beside the coconut tree stump where he said he buried the hand-grenade. He was cross-examined in great detail. In cross-examination he said that in his report he merely stated the following words: "He (Er Ah Kiat) hid the hand-grenade". In his recorded statement he said he never used the words "He said".

P.W.4, the police photographer, in his evidence-in-chief said that the accused led them